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CITY OF OAKLAND, SGT. PATRICK GONZALES,
6 and CHIEF OF POLICE WAYNE TUCKER

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**
11

12 GARY KING, JR., DECEASED, THROUGH
HIS SUCCESSOR IN INTEREST ASHANTE
13 SIMPSON ON BEHALF OF BABY KING;
GARY KING, SR., Individually, CATHERINE
14 KING, Individually, and ASHANTE
SIMPSON as Next Friend on behalf of
15 BABY KING, Individually,

16 Plaintiffs,

17 v.

18 CITY OF OAKLAND, a public entity POLICE
SERGEANT PATRICK GONZALES,
19 Individually, CHIEF OF POLICE WAYNE
TUCKER, individually and in his official
20 capacity, and DOES 1 through 10, Jointly
and Severally,
21

22 Defendants.
23
24
25
26

Case No. C 08-02394 SBA

**DEENDANTS' ANSWER TO SECOND
AMENDED COMPLAINT**

1 Defendants CITY OF OAKLAND, SERGEANT PATRICK GONZALES AND CHIEF
2 OF POLICE WAYNE TUCKER hereby answer, object, and otherwise respond to the
3 Complaint on file herein as follows.

4 **JURISDICTION**

5 1. Defendants are without knowledge or information sufficient to form a belief
6 as to the truth of the allegations in this paragraph and on that basis, deny each and every
7 allegation contained herein.

8 **INTRADISTRICT ASSIGNMENT**

9 2. Defendants are without knowledge or information sufficient to form a belief
10 as to the truth of the allegations in this paragraph and on that basis, deny each and every
11 allegation contained herein.

12 **PARTIES AND PROCEDURE**

13 3. Defendants are without knowledge or information sufficient to form a belief
14 as to the truth of the allegations in this paragraph and on that basis, deny each and every
15 allegation contained herein.

16 4. Defendants are without knowledge or information sufficient to form a belief
17 as to the truth of the allegations in this paragraph and on that basis, deny each and every
18 allegation contained herein.

19 5. Defendants are without knowledge or information sufficient to form a belief
20 as to the truth of the allegations in this paragraph and on that basis, deny each and every
21 allegation contained herein.

22 6. Defendants are without knowledge or information sufficient to form a belief
23 as to the truth of the allegations in this paragraph and on that basis, deny each and every
24 allegation contained herein.

25 7. Defendants admit the allegations set forth in this paragraph.

26 8. Defendants admit the allegations set forth in this paragraph.

1 9. Defendants admit the allegations set forth in this paragraph.

2 10. Defendants deny the allegations set forth in this paragraph.

3 11. Defendants are without knowledge or information sufficient to form a belief
4 as to the truth of the allegations in this paragraph and on that basis, deny each and every
5 allegation contained herein.

6 12. Defendants are without knowledge or information sufficient to form a belief
7 as to the truth of the allegations in this paragraph and on that basis, deny each and every
8 allegation contained herein.

9 13. Defendants are without knowledge or information sufficient to form a belief
10 as to the truth of the allegations in this paragraph and on that basis, deny each and every
11 allegation contained herein.

12 14. Defendants are without knowledge or information sufficient to form a belief
13 as to the truth of the allegations in this paragraph and on that basis, deny each and every
14 allegation contained herein.

15 15. Defendants are without knowledge or information sufficient to form a belief
16 as to the truth of the allegations in this paragraph and on that basis, deny each and every
17 allegation contained herein.

18 16. Defendants are without knowledge or information sufficient to form a belief
19 as to the truth of the allegations in this paragraph and on that basis, deny each and every
20 allegation contained herein.

21 **GENERAL ALLEGATIONS**

22 17. Defendants incorporate herein their responses to the allegations contained in
23 paragraphs 1 through 16, as previously set forth.

24 18. Defendants deny the allegations set forth in this paragraph.

25 19. Defendants admit that Defendant Gonzales drew his gun, fired 2 shots at
26 Gary King, Jr., hitting him, and that Defendant Gonzales handcuffed Gary King, Jr.

1 Defendants deny the remaining allegations set forth in this paragraph.

2 20. Defendants deny the allegations set forth in this paragraph.

3 21. Defendants deny the allegations set forth in this paragraph.

4 22. Defendants deny the allegations set forth in this paragraph.

5 23. Defendants deny the allegations set forth in this paragraph.

6 24. Defendants deny the allegations set forth in this paragraph.

7 25. Defendants deny the allegations set forth in this paragraph.

8 26. Defendants deny the allegations set forth in this paragraph.

9 27. Defendants are without knowledge or information sufficient to form a belief
10 as to the truth of the allegations in this paragraph and on that basis, deny each and every
11 allegation contained herein.

12 **COUNT ONE**
13 **-- 42 USC §1983 --**

14 **ALL PLAINTIFFS AGAINST DEFENDANTS GONZALES AND DOES 1-10**

15 28. Defendants incorporate herein their responses to the allegations contained in
16 paragraphs 1 through 27, as previously set forth.

17 29. Defendants deny the allegations set forth in this paragraph.

18 30. Defendants deny the allegations set forth in this paragraph.

19 31. Defendants deny the allegations set forth in this paragraph.

20 32. Defendants deny the allegations set forth in this paragraph.

21 33. Defendants deny the allegations set forth in this paragraph.

22 **COUNT TWO**
23 **-- 42 USC §1983 --**

24 **ALL PLAINTIFFS AGAINST DEFENDANTS CITY OF OAKLAND, CHIEF OF POLICE**
25 **WAYNE TUCKER, AND DOES 1-10**

26 34. Defendants incorporate herein their responses to the allegations contained in
27 paragraphs 1 through 33, as previously set forth.

35. Defendants deny the allegations set forth in this paragraph.

1 36. Defendants deny the allegations set forth in this paragraph.

2 37. Defendants deny the allegations set forth in this paragraph.

3 38. Defendants deny the allegations set forth in this paragraph.

4 39. Defendants deny the allegations set forth in this paragraph.

5 40. Defendants deny the allegations set forth in this paragraph.

6 **COUNT THREE**
7 **-- VIOLATION OF CIVIL CODE §52.1 --**
8 **PLAINTIFF BABY KING AGAINST ALL DEFENDANTS**

9 41. Defendants incorporate herein their responses to the allegations contained in
10 paragraphs 1 through 40, as previously set forth.

11 42. Defendants deny the allegations set forth in this paragraph.

12 43. Defendants deny the allegations set forth in this paragraph.

13 **COUNT FOUR**
14 **-- NEGLIGENCE; PERSONAL INJURIES --**
15 **PLAINTIFF BABY KING AGAINST ALL DEFENDANTS**

16 44. Defendants incorporate herein their responses to the allegations contained in
17 paragraphs 1 through 43, as previously set forth.

18 45. Defendants deny the allegations set forth in this paragraph.

19 46. Defendants deny the allegations set forth in this paragraph.

20 47. Defendants deny the allegations set forth in this paragraph.

21 48. Defendants deny the allegations set forth in this paragraph.

22 49. Defendants deny the allegations set forth in this paragraph.

23 50. Defendants deny the allegations set forth in this paragraph.

24 **COUNT FIVE**
25 **-- ASSAULT AND BATTERY --**
26 **PLAINTIFF BABY KING AGAINST ALL DEFENDANTS**

51. Defendants incorporate herein their responses to the allegations contained in
paragraphs 1 through 50, as previously set forth.

52. Defendants deny the allegations set forth in this paragraph.

1 53. Defendants deny the allegations set forth in this paragraph.

2 **COUNT SIX**
3 **-- VIOLATION OF CALIFORNIA CIVIL CODE §51.7 --**
4 **PLAINTIFF BABY KING AGAINST ALL DEFENDANTS**

5 54. Defendants incorporate herein their responses to the allegations contained in
6 paragraphs 1 through 53, as previously set forth.

7 55. Defendants deny the allegations set forth in this paragraph.

8 56. Defendants deny the allegations set forth in this paragraph.

9 **AFFIRMATIVE DEFENSES**

10 **I.**

11 AS A FURTHER, FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
12 allege that the complaint fails to state a claim upon which relief can be granted.

13 **II.**

14 AS A FURTHER, SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,
15 defendants allege, on information and belief, that plaintiffs' decedent did not exercise
16 ordinary care, caution, or prudence to avoid the alleged event and/or accident;
17 consequently, the subsequent injuries or damages, if any, claimed were proximately
18 caused by and contributed to by plaintiffs' decedent's comparative negligence, and any
19 damages they might otherwise be entitled to should be proportionately reduced by the
20 degree of that negligence.

21 **III.**

22 AS A FURTHER, THIRD, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
23 allege that the injuries and damages plaintiffs complain of resulted from the acts and/or
24 omissions of others, or acts of God, and without any fault on the part of defendants.

25 **IV.**

26 AS A FURTHER, FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,
defendants allege that any party or individual who contributed to and/or caused the alleged

1 injuries and damages was not acting as its agent or with its knowledge or within the course
2 and/or scope of employment with defendant CITY OF OAKLAND.

3 **V.**

4 AS A FURTHER, FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
5 allege that, to the extent that plaintiffs may attempt to allege state claims, these are barred
6 by all applicable Government Code protections and immunities, including, but not limited
7 to, sections 815 through 900. Said sections are pleaded as though fully set forth herein.

8 **VI.**

9 AS A FURTHER, SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
10 allege that all of the actions of defendants were undertaken in good faith and with the
11 reasonable belief that such actions were valid, necessary, reasonable, lawful and
12 constitutionally proper, entitling defendants to the qualified immunity of good faith.

13 **VII.**

14 AS A FURTHER, SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
15 defendants allege that, if they in any fashion caused the injuries or damages alleged,
16 although such liability is expressly denied herein, their acts and/or omissions were
17 reasonable and privileged.

18 **VIII.**

19 AS A FURTHER, EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,
20 defendants allege, on information and belief, that plaintiffs failed to mitigate damages.

21 **IX.**

22 AS A FURTHER, NINTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants
23 allege that, to the extent that plaintiffs allege or assert matters not contained in a legally
24 sufficient claim filed by them, this action is barred by the claims requirements set forth in
25 Government Code Section 905 et seq.
26

X.

AS A FURTHER, TENTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that this action is barred, under Government Code § 945.6, by plaintiffs' failure to file their action within six months after denial of their claim by defendants.

XI.

AS A FURTHER, ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that this action is barred by all applicable statutes of limitations.

XII.

AS A FURTHER, TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that this action is barred by the doctrine of primary assumption of the risk.

XIII.

AS A FURTHER, THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that plaintiffs lack standing to bring the claims alleged.

PRAYER

WHEREFORE, defendants pray that:

1. Plaintiffs take nothing by his Complaint;
2. Defendants have judgment against Plaintiffs;
3. Defendants be awarded their costs of suit; and
4. For such other and further relief as the Court may deem proper.

Dated: August 25, 2008

JOHN A. RUSSO, City Attorney
RANDOLPH W. HALL, Chief Assistant City Attorney
WILLIAM E. SIMMONS, Supervising Trial Attorney

By: /s/William E. Simmons
Attorneys for Defendants,
CITY OF OAKLAND, et al.